

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

GAYLAND FIX and CARMAN FIX,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 04-01007-CV-W-SOW
	)	
COTTRELL, INC., et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court are defendant Cottrell, Inc.'s Motion for Protective Order (Doc. #51) and plaintiffs' Suggestions in Opposition. Also before the Court is defendant Parker Hannifin Corporation's Motion to Compel Discovery Responses (Doc. #53). For the reasons stated below, both motions are denied.

I. Standard

Discovery motions in this Court are governed by Local Rule 37.1. In relevant part, Local Rule 37.1 provides that:

(a) Except when authorized by an order of the Court, the Court will not entertain **any** discovery motions, until the following requirements have been satisfied:

1. Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. . . . Counsel for the moving party shall certify compliance with this rule in any discovery motion. . . . ; and
2. If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the Court for an immediate telephone conference with the judge and

opposing counsel. *No written discovery motion shall be filed until this telephone conference has been held.*

(Emphasis added).

## II. Discussion

### A. Defendant Cottrell, Inc.’s Motion for Protective Order

Defendant Cottrell, Inc. seeks the entry of a protective order stating that many of plaintiffs’ propounded interrogatories and requests for production request “trade secret, confidential, and proprietary documents and information.” Defendant Cottrell, Inc. has provided the Court with a proposed protective order.

Plaintiffs have filed a 14-page response in which they concede that certain documents being provided by defendant Cottrell, Inc. “may be a proper subject of a protective order,” yet oppose the protective order submitted by defendant Cottrell. Plaintiffs have submitted their own proposed protective order.

There is no indication from the briefs filed with the Court that counsel for defendant Cottrell and counsel for plaintiffs have conferred and attempted to reach an agreement on a mutually acceptable protective order. The Court considers a motion seeking a protective order in response to discovery requests to be a discovery motion covered by Local Rule 37.1. Therefore, counsel for defendant Cottrell, Inc. and counsel for plaintiffs are directed to confer and to attempt to arrive at a mutually acceptable “Joint Proposed Protective Order.” If this conference proves unsuccessful, then counsel should request a telephone conference with the Court.

Defendant Cottrell’s Motion for Protective Order is denied at this time.

B. Defendant Parker Hannifin's Motion to Compel Discovery Responses and Determine the Sufficiency of Objections

Similarly, defendant Parker Hannifin has filed a motion seeking to compel certain discovery responses and to have the Court determine the sufficiency of certain objections to discovery requests. Parker Hannifin claims that he attempted to confer with plaintiffs' counsel about these matters by telephone and via e-mail on May 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup>, 2005, but the matter could not be resolved.

Defendant Parker Hannifin has ignored the second directive in Local Rule 37.1 that requires a party to "arrange with the Court for an immediate telephone conference with the judge and opposing counsel." Parker Hannifin has not requested such a telephone conference. Local Rule 37.1 specifically, "No written discovery motion shall be filed until this telephone conference has been held."

Therefore, defendant Parker Hannifin's motion is denied at this time. Counsel should contact Kelly McIlvain, the Courtroom Deputy for this division, at (816) 512-5744, to schedule a discovery dispute telephone conference.

III. Conclusion

For the reasons stated above, it is hereby

ORDERED that defendant Cottrell, Inc.'s Motion for Protective Order (Doc. #51) is denied at this time. It is further

ORDERED that defendant Parker Hannifin Corporation's Motion to Compel Discovery Responses (Doc. #53) is denied at this time.

/s/Scott O. Wright  
SCOTT O. WRIGHT  
Senior United States District Judge

Dated: 5-17-05